

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3929, 3930, 3931
3932 and 3933 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHKUMAR MANGALDAS PATEL

Versus

SPECIAL RECOVERY OFFICER

Appearance:

1. Special Civil Application No. 3929 of 1992
MR BJ JADEJA for Petitioner
MR KG SHETH, Learned AGP for Respondent No. 1
RULE SERVED for Respondent No. 2, 3
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/10/2000

COMMON C.A.V. JUDGEMENT

1. All these matters involve common question of fact and law and, therefore, by consent of the learned advocates for the parties, these matters are taken up together and they have been heard together and they are being disposed of together by this common judgement.

2. The petitioner in respective petition has filed this petition under Article 227 of the Constitution of India for quashing and setting aside the order at Annexure-B in each matter passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat, in concerned revision application confirming the orders of Collector in respective matters.

3. The facts may briefly be stated as follows :

The third respondent in each matter had taken loan from the second respondent and since he could not repay the said amount to the said Cooperative Society, the proceedings were initiated against the respective respondent and accordingly, certificates were issued and obtained under Section 106 of the Cooperative Society Act for recovery of the said amount. The matters went to the Special Recovery Officer Surat i.e. respondent no.1 in each case. It seems from the records that the said officer held public auction in respect of lands belonging to the said respondent no.3 in each case. It appears from the record that the petitioner in each matter purchased the said land in public auction held by the Special Recovery Officer i.e. first respondent in each matter. The amount was paid up and the lands were purchased by the respective petitioners in each case since their bid was accepted by the Special Recover Officer. Accordingly, entries were posted in the name of the petitioner respectively since they were declared purchaser and occupant of the said land. Thereafter, it appears from the record that on 27.12.1989 Collector, Surat issued notices to the aforesaid petitioners for the first time saying that the petitioners were not agriculturists and, therefore, the sale of agricultural land in favour of the petitioners was illegal and, therefore, they were asked to show cause as to why the said order of sale in favor of the petitioner be not cancelled. Date and time was given to the petitioners for appearance. It also appears from the record that learned Collector heard the petitioners and passed orders on 13.11.1991 directing cancellation of the aforesaid public auction on 4.11.1978 held by the Special Recovery Officer. The learned Collector also directed that the aforesaid amount be refunded by the said Society i.e. respondent no.2 to the said purchasers i.e. the

petitioners. It is further directed that the charge over the said land shall again be imposed and fresh process for recovery be effected. It is further directed that records of right should also be altered accordingly.

The petitioners felt aggrieved by the said order and therefore they preferred revision application before the Principal Secretary, Revenue Department, (Appeals) Government of Gujarat, Ahmedabad. The matter was heard by the said Authority and by an order dated 4.3.1992 the said revision application was dismissed by the said Authority.

4. Feeling aggrieved by the said judgement and orders passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat, the petitioner in respective petition has filed this petition before this Court.

5. It has been mainly been contended here that they were bonafide purchaser of the aforesaid property for value and without notice. That the learned Collector has taken proceedings very late after about 11 years. That the petitioner in respective petition has developed the land by spending huge amount. That the learned Collector had no power or authority to pass order for cancellation of the said sale in favour of the petitioners. That therefore the said orders of the Collector are illegal and erroneous and deserve to be quashed and set aside. The petitioners have also submitted that even the orders passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat are also similarly illegal since when the original orders are illegal, the orders in appeal are bound to be illegal and, therefore, both the orders are illegal and deserve to be quashed and set aside. The petitioners therefore pray that this petition be allowed and aforesaid orders passed by the Collector and confirmed in revision be quashed and set aside.

6. On receiving the petition, rule was issued and interim relief was also granted. Mr. K.G.Sheth, learned AGP appears in response to the service of rule for State. However, the respondents have not filed affidavit in reply to the petition. I have heard learned advocates for the parties and have perused the papers.

7. Mr. B.J.Jadeja, learned advocate for the petitioner in respective petition arguing the matter at length states that though the initial proceeding of public auction was held on 4.11.1978 and though the

relevant entries were posted in Government records of right, the Collector has taken up the proceedings for the first time on 27.12.1989. That therefore these proceedings have been initiated nearly about 10 to 11 years after the sale was confirmed in favour of the petitioners. It is no doubt true that Collector can take suo-motu revision under Section 211 of the Bombay Land Revenue Code. That it is also true that no limitation is provided for the exercise of such powers. That at the same time, it has been laid down by several decisions of this Court as well as Hon'ble Supreme Court that these powers are required to be exercised within reasonable time. That in the present matters, the powers have been exercised after a long lapse of 10 to 11 years and, therefore, such orders passed in exercise of revisional powers under Section 211 of the Bombay Land Revenue Code may be struck down.

8. Now, considering the records, it is very clear that facts are not at all disputed. The third respondent in each matter was indebted to the second respondent and because of the certificates under Section 106 of the Gujarat Cooperative Societies Act, recovery proceedings were initiated against the petitioners in each matter. The agricultural land of the third respondent in each matter was taken into attachment and was put to public auction by the Special Recovery Officer. The public auction was conducted and petitioner in each matter stood as bidder in respective matter. Since their bid was highest, their bid was accepted by the Special Recovery Officer, they were declared purchasers. They paid up the amount of their bid and that was credited into account of the said Cooperative Society i.e. respondent no.2 in each matter. The petitioners were declared purchaser and it was directed that entries may be posted in revenue records of right and that was accordingly done.

9. Then on 27.12.1989, the Collector for the first time issued notices to the petitioners by exercising revisional powers under Section 211 of the Bombay Land Revenue Code. The said notices are placed at Annexure-B to the petition in each matter. This fact is not at all in dispute. The question is as to whether the revisional powers can be exercised after long lapse of time. Here, the period is not less than 10 years.

10. On this aspect of the case, Mr. B.J.Jadeja, learned advocate for the petitioner in each matter has relied upon certain decisions of this Court as well as of Hon'ble Apex Court in order to argue that the revisional powers cannot be exercised after long lapse of time. For

this purpose, he has mainly relied upon a decision of the Hon'ble Supreme Court in the case of State of Gujaarat Vs. Patel Raghav Natha and Others, reported in 1969 GLR 992. There, it was observed that it is true that there is no period of limitation prescribed for exercising powers under Section 211 of the Bombay Land Revenue Code but it is plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order. Now, in the present case, the delay has not been explained. Any way, it has not been explained in the show cause notice and it has not been explained in the orders of the Collector and even also in the order of the Principal Secretary, Revenue Department (Appeals) Government of Gujarat no explanation has been given. Then again before this Court, no affidavit has been filed in order to explain the delay. Therefore, even in the pending matters also, the respondents have not come forward to explain the delay. So far respondent no.2 is concerned, the Society has already recovered the amount and therefore respondent no.2 would not be interested in explaining the delay. As regards the respondent the no.3, the land has been sold and debt has been satisfied. Therefore, he may not be interested in explaining the delay. Therefore, it would for the first respondent to shoulder the burden of explaining the delay. Even in the present case, we find that the respondents have not filed affidavit and have not produced any material on record to show that as to why there was delay in exercising the powers under Section 211 of the Bombay Land Revenue Code. Even the Collector or some Revenue Officers could have come forward to explain the delay. This has not been done. Therefore, it is a fact that there is unexplained and inordinate delay of not less than 10 years in the matter of exercise of powers under Section 211 of the Bombay Land Revenue Code. In that view of the matter, the decision rendered in the case of State of Gujarat Vs. Patel Raghav Natha and Others (supra) clearly applies to the facts of the case before us and, therefore, it would be necessary for this Court also to hold that exercise of powers under Section 211 of the Bombay Land Revenue Code after a span of 10 years cannot be sustained.

11. The learned advocate for the petitioner has also relied upon a decision of the Hon'ble Supreme Court in the case of Mohmad Kavi Mohmad Amin Vs. Fatmabai Ibrahim, reported in 1997 SAR (Civil) SC 783 which refers to the provisions contained in Section 84(1) of the Bombay Tenancy and Agricultural Land Act, 1948. There it has been laid down that powers under Section 84(1) should

be exercised within a reasonable time. There also the State of Gujarat Vs. Patel Raghav Natha (supra) was considered and it was again reiterated that when no time limit is prescribed for the exercise of a power under a statute, it does not mean that it can be exercised at any time. That such power has to be exercised within the reasonable time. In the aforesaid matter, sale deed was registered in December, 1972 and mutation entry was posted in February, 1973. The Mamlatdar had initiated proceedings in 1976. There the Hon'ble Supreme Court has found that powers were not exercised within the reasonable time. Therefore, in that matter even 3 years span was not considered reasonable by the Hon'ble Supreme Court.

12. It is therefore clear that in the present case, powers have been exercised after long span of more than 10 years and then inordinate delay has totally not been explained by the respondents. Therefore, it is clear that the powers have been exercised after inordinate and unexplained delay of more than 10 years and therefore the orders passed in exercise of such revisional jurisdiction have to be struck down by this Court.

13. Similar view was adopted by this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991 (1) GLR 113. It has been laid down that Collector is not authorized to deal with the matters under the Bombay Tenancy and Agricultural Land Act, 1948. However, in view of the aforesaid finding of this Court, it is very clear that powers of revision under Section 211 of the Bombay Land Revenue Code have been exercised very late and no explanation has been set out for explaining the said delay. As stated above, the petitioner in respective petition has spent huge amount for bringing the land to proper cultivation and the land is being cultivated by them since more than 10 years and now there is further delay of not less than 8 years.

14. In the aforesaid view of the matter, it is clear that orders passed by the Collector as well as by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat are required to be held to be illegal as have been passed in exercise of revisional powers under Section 211 of the Bombay Land Revenue Code after long lapse of time and the entire period has remained unexplained. It is more so when the petitioners have developed the land. Now, whether by allowing the petition, the petitioners will be treated to be an agriculturists for the purpose of aforesaid Act is not a

question to be dealt with and decide by this Court. Therefore I am not inclined to consider and decide the aforesaid issue which was not even argued on behalf of the parties before me. Any way, the aforesaid orders are illegal and therefore are required to be quashed and set aside.

16. In the result, following order is passed :

1. SPECIAL CIVIL APPLICATION NO. 3929 OF 1992

Order at Annexure-D passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat, Ahmedabad in Revision Application No. SRD/Sat/REV/4/91 dated 11.2.1992/4/3/1992 as confirming the order at Annexure-C passed by the Collector, Surat on 13.11.1991 in REV/auction/suo motu/56/1991.

2. SPECIAL CIVIL APPLICATION NO. 3930 OF 1992

Order at Annexure-D passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat, Ahmedabad in Revision Application No. SRD/Sat/REV/5/91 dated 11.2.1992/4/3/1992 as confirming the order at Annexure-C passed by the Collector, Surat on 13.11.1991 in REV/auction/suo motu/55/1991.

3. SPECIAL CIVIL APPLICATION NO. 3931 OF 1992

Order at Annexure-D passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat, Ahmedabad in Revision Application No. SRD/Sat/REV/2/91 dated 11.2.1992/4/3/1992 as confirming the order at Annexure-C passed by the Collector, Surat on 13.11.1991 in REV/auction/suo motu/51/1991.

4. SPECIAL CIVIL APPLICATION NO. 3932 OF 1992

Order at Annexure-D passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat, Ahmedabad in Revision Application No.

SRD/Sat/REV/1/91 dated 11.2.1992/4/3/1992 as confirming the order at Annexure-C passed by the Collector, Surat on 13.11.1991 in REV/auction/suo motu/53/1991.

5. SPECIAL CIVIL APPLICATION NO. 3933 OF 1992.

Order at Annexure-D passed by the Principal Secretary, Revenue Department (Appeals) Government of Gujarat, Ahmedabad in Revision Application No. SRD/Sat/REV/7/91 dated 11.2.1992/4/3/1992 as confirming the order at Annexure-C passed by the Collector, Surat on 13.11.1991 in REV/auction/suo motu/52/1991.

are hereby quashed and set aside. Rule is made absolute with no order as to costs.

(vipul)